HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 589 of 2007

Between:

Dr. M. Prabhakar Rao

… Appellant

And

M. Venkateshwar Rao & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri M.V.S. Suresh Kumar

Counsel for respondent No. 1 : Shri Sivaraju Srinivas

July 31, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 05.07.2007 passed by the learned Single Judge in W.P.M.P.No.17802 of 2007 in Writ Petition No.14182 of 2007, whereby he directed respondent Nos.1 to 3 to re-fix the petitioner's pay and emoluments by taking into consideration the service rendered by him from 17.08.1976 in the cadre of Lecturer and pay him the arrears within a period of four weeks.

In the writ petition filed by him, respondent No.1 herein – M. Venkateshwar Rao has made the following substantive prayer:

> " Hence, it is prayed that this Hon'ble Court, in the interest of justice, be pleased to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus by declaring

the action of the respondents No.1,2 and 3 in not implementing the G.O.Ms.No.21 Higher Education (CE.II.1) Department, dated 09.04.2003 and thereby direct them to implement the same with immediate effect and consequently, put the name of the writ petitioner herein in the seniority list circulated on 4.12.2006 above the name of the 5th respondent, Reader in Physics, who has been appointed as a Lecturer well after the appointment of the writ petitioner with effect from 9.4.2003 along with all consequential benefits including but not limited to revision of pay, payments of arrears with effect from 9.4.2003 etc. and pass such other order or further orders as are deemed fit and proper in the circumstances of the case."

In W.P.M.P., respondent No.1 prayed as under:

" For the reasons stated in the affidavit filed in support of the above writ petition, it is prayed that this Hon'ble Court, in the interest of justice, be pleased to direct the 1st, 2nd and 3rd respondents herein to re-fix my pay and emoluments by reckoning my service by taking my initial date of appointment into consideration and consequently pay the arrears of pay for the period 09.04.2003 to date and continue paying me my monthly salary on such revised pay and pass such order or further orders as are deemed fit and proper ion the circumstances of the case."

The learned Single Judge did not issue notice to non-petitioner Nos. 5 to 11 (including the appellant herein) and passed interim order, which reads as under:

" It appears, petitioner was initially appointed as a P.G. Administrator on 17.08.1976. Immediately thereafter, Government issued G.O.Ms.No.1072 dated 26.11.1976, where under the post of Administrator was merged and re-designated as single cadre of Lecturer in the respective faculties. In view of the same, petitioner became lecturer with effect 26.11.1976. It is the case of the petitioner that the fifth respondent Dr. M. Prabhakar Rao who was initially appointed as Lecturer with effect from 5.2.1977, was given seniority over and above him. According to the petitioner, fifth respondent was never there either before his appointment as Administrator or before issuance of G.O.Ms.No.1072 dated 26.11.1976. Therefore,

looking from any angle, fifth respondent could not have been shown as senior to him. Further, as per G.O.Ms.No.21 dated 9.4.2003, Government directed the Demonstrators/Tutors now working as Lecturers be re-designated as Lecturers from the date of their appointment as shown against their names.

In the said G.O., the name of the petitioner was shown at Serial No.1 and the date of his appointment as 17.08.1976. But however, in the seniority list communicated vide order dated 4.12.2006 of the third respondent, petitioner was shown at Serial No.20, whereas the fifth respondent was shown at Serial No.1. This appears to be prima facie not valid.

In view of the same, respondents 1 to 3 are directed to consider for re-fixation of pay and emoluments of the petitioner reckoning the service rendered by him from 17.8.1976 in the cadre of Lecturer and to pay all the arrears accrued thereunder within a period of four weeks from the date of receipt of this order.

Notice."

Shri M.V.S. Suresh Kumar argued that even though for the purpose of entertaining the prayer made in W.P.M.P.No.17802 of 2007, the learned Single Judge did not issue notice to the appellant by declaring him and fiver others as unnecessary parties, the impugned order contains a clear observation that he is junior to respondent No.1. Learned counsel submitted that if the order of the learned Single Judge is given effect to, the appellant's right to be promoted to the next higher post will be seriously jeopardized and such an order could not have been passed without giving him notice and opportunity of hearing. Sri Suresh Kumar then argued that an interlocutory order of the nature like the one passed by the learned Single Judge amounts to virtual disposal of the writ petition without even issuing notice to the opposite parties and, therefore, the same is liable to be set aside.

Shri Sivaraju Srinivas, learned counsel for respondent No.1 defended the direction given by the learned Single Judge and argued that his client is entitled to be treated senior to the appellant because

the latter had joined as Lecturer on 05.02.1977, whereas respondent No.1 joined on that post on 17.08.1976.

We have considered the respective submissions. If the writ petition filed by respondent No.1 is finally allowed, the Court may direct fixation of his seniority over the appellant with consequential benefits. In that event, respondent No.1 will become entitled to preferential treatment in the matter of promotion to the next higher post. However, without finally adjudicating the dispute relating to inter se seniority of the writ petitioner (respondent No.1 herein) and the appellant, which could be done only after issuing notice to the latter and giving him opportunity of hearing, the learned Single Judge was not, at all, justified in issuing interlocutory mandamus for re-fixation of the pay of the writ petitioner by reckoning his service from 17.08.1976 in the cadre of Lecturer.

In our considered view, the management of the college will be well within its right to challenge the impugned order by filing appeal and show that such an order could not have been made without considering the basic elements like prima facie case, irreparable injury and balance of convenience.

Insofar as the appellant is concerned, his status in the cadre of Lecturer deserves to be protected by directing that the order under challenge shall not be construed by the management of the college or the authorities of the College Education Department for treating the writ petitioner senior to him in the cadre of Lecturers. Ordered accordingly.

The appeal is disposed of in the manner indicated above.

As a sequel to the disposal of the writ appeal, W.A.M.P.No. 1181 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 31, 2007
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